



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Cleta Mitchell, Esq.
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Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D.C. 20007-5109

APR 15 2013

RE: MUR 6449
Jon Bruning
Bruning for Senate, Inc. f/k/a
Bruning 2012 Exploratory
Committee and Douglas R. Ayer
in his official capacity as treasurer

Dear Ms. Mitchell:

On April 10, 2013, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 432(e)(1), 433(a), 434(a) and 434(b) and 11 C.F.R. § 101.1(a), provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a fully executed conciliation agreement for your files. Please note that the agreement requires that the civil penalty is paid and the Bruning for Senate, Inc.,

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disclosure reports are amended within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Mark Allen
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
Jon Bruning)
Bruning for Senate, Inc. f/k/a Bruning 2012)
Exploratory Committee and Douglas R. Ayer)
in his official capacity as treasurer)

OFFICE OF GENERAL
COUNSEL
MUR 6449

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that Jon Bruning violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) and that Bruning for Senate, Inc. f/k/a Bruning 2012 Exploratory Committee and Douglas R. Ayer in his official capacity as treasurer violated 2 U.S.C. §§ 433(a), 434(a) and 434(b) (collectively, "Respondents") provisions of the Federal Election Campaign Act of 1971, as amended.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent law and facts in this matter are as follows:

Background

1. Jon Bruning was a candidate for the United States Senate in Nebraska in the

1 2008 and 2012 elections. His principal campaign committee for the 2008 election was Friends of
2 Jon Bruning ("Bruning 2008"). His principal campaign committee for the 2012 election was
3 Bruning for Senate, Inc. ("Bruning 2012").

4 2. On November 19, 2007, Bruning withdrew from the 2008 election.
5 Respondents contend that Bruning asked the 2008 general election contributors in writing to
6 redesignate their contributions to Jon Bruning Exploratory Committee "for a future election" and
7 advised contributors that they could in the alternative receive a refund. Respondents further
8 contend that all but \$4,600 of the refunds made was reported to the Commission by Bruning
9 2008 on its 2007 Year End/Termination Report filed in January 2008.

10 3. On December 31, 2007, Bruning 2008 transferred its remaining funds,
11 \$677,251.49, to Jon Bruning Exploratory Committee that was established in December 2007 as a
12 testing the waters account and authorized by Bruning for the purpose of exploring a possible
13 future federal candidacy. Respondents contend that all funds transferred to the Jon Bruning
14 Exploratory Committee were permissible funds and the donors whose contributions comprised
15 the transfer were reported by Bruning 2008 at the time of their original contribution, and that the
16 portion of the funds from contributors to the 2008 general election was also reported by Bruning
17 2012 on its 2011 April Quarterly Report.

18 4. Between January 1, 2008 and March 22, 2008, Jon Bruning Exploratory
19 Committee refunded \$4,600 to contributors to Bruning 2008. Jon Bruning Exploratory
20 Committee received bank interest on its funds through the remainder of 2008, 2009, and 2010.

21 5. On November 5, 2010, Bruning opened a "2012 Exploratory Account" for
22 testing the waters for the 2012 United States Senate election. On the same date, Jon Bruning
23 Exploratory Committee transferred \$448,349.52 to the 2012 Exploratory Account. On

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1 December 17, 2010, Jon Bruning Exploratory Committee transferred \$162,313.51 to the 2012
2 Exploratory Account. Respondents contend that the funds transferred to the 2012 Exploratory
3 Account included bank interest on the John Bruning Exploratory Committee funds between 2008
4 and 2010.

5 6. Between November 5, 2010, and December 31, 2010, the 2012 Exploratory
6 Account received an additional \$246,604.73 in contributions and interest, of which \$223,800 was
7 itemized contributions.

8 7. On January 3, 2011, Bruning filed a Statement of Candidacy with the
9 Secretary of the Senate for the 2012 election, designating Bruning 2012 f/k/a Bruning 2012
10 Exploratory Committee as his principal campaign committee. Also on January 3, 2011, Bruning
11 2012 filed a Statement of Organization with the Secretary of the Senate, identifying Douglas R.
12 Ayer as the treasurer of Bruning 2012. The first disclosure report filed by Bruning 2012 was the
13 2011 April Quarterly Report filed on April 15, 2011.

14 Applicable Law

15 8. The Act provides that an individual seeking nomination for election to
16 federal office is deemed to be a "candidate" when he or she receives contributions or makes
17 expenditures aggregating in excess of \$5,000. 2 U.S.C. § 431(2).

18 9. The Act and the Commission's regulations provide that, within fifteen days
19 of becoming a candidate, an individual must file a Statement of Candidacy that designates the
20 candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a).

21 10. The Act requires a principal campaign committee to file a Statement of
22 Organization within ten days after it has been designated by the candidate. 2 U.S.C. § 433(a).

23 11. Each treasurer of a political committee shall file periodic reports of the

1 committee's receipts and disbursements with the Commission. *See* 2 U.S.C. §§ 434(a) and (b).
2 In the case of a principal campaign committee for a candidate running for the United States
3 Senate, it must timely file disclosure reports as required by 2 U.S.C. § 434(a)(2).

4 12. The Commission's "testing the waters" regulations, 11 C.F.R.
5 §§ 100.72(a) and 100.131(a), exempt from the definitions of "contribution" and "expenditure"
6 funds received solely for the purpose of determining whether an individual should become a
7 candidate. The exemptions do not apply to funds received or payments made for activities
8 indicating that an individual has decided to become a candidate for a particular office or for
9 activities relevant to conducting a campaign. *Id.* These regulations seek to draw a distinction
10 between activities directed to an evaluation of the feasibility of one's candidacy, as distinguished
11 from conduct signifying that a private decision to become a candidate has been made. *See*
12 Advisory Opinion 1981-32 (Askew).

13 13. The Commission's regulations provide that examples of activities
14 indicating that an individual has decided to become a candidate include, but are not limited to:
15 raising funds in excess of what could reasonably be expected to be used for exploratory activities
16 or activities designed to amass funds to be spent after becoming a candidate; or making or
17 authorizing written or oral statements that refer to the individual as a candidate for a particular
18 office. 11 C.F.R. §§ 100.72(b) and 100.131(b).

19 14. If the individual who had been "testing the waters" subsequently becomes a
20 candidate, funds received or payments made for "testing the waters" are contributions and
21 expenditures subject to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a)
22 and 100.131(a). Such contributions and expenditures must be reported with the first report filed
23 by the principal campaign committee of the candidate, regardless of the date the funds were

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1 received and the payments made. *Id.* 11 C.F.R. §§ 101.3, 104.3(a)-(b). Authorized committees
2 are required to disclose, *inter alia*, transfers, dividends and interest received, and contribution
3 refunds disbursed. 2 U.S.C. § 434(b)(2)(E), (b)(2)(J), (b)(4)(B), (b)(4)(F).

4 *Jon Bruning and Bruning 2012*

5 15. In a November 30, 2010, solicitation e-mail, Bruning stated, "Please help me
6 defeat Ben Nelson in 2012 by making a contribution today. Together we can take back this
7 country and bring true Nebraska values to Washington." Bruning's statement demonstrates that
8 he had decided to be a candidate for federal office.

9 16. Accordingly, Bruning became a candidate by November 30, 2010, and was
10 required to file a Statement of Candidacy designating a principal campaign committee within
11 fifteen days of that date. Bruning's principal campaign committee, Bruning 2012, was required
12 to file a Statement of Organization within ten days of Bruning's timely designation and file
13 quarterly disclosure reports thereafter.

14 17. Bruning 2012 was required to file the 2010 Year End Report by January 31,
15 2011. Bruning 2012 did not file a disclosure report until the 2011 April Quarterly Report on
16 April 15, 2011.

17 V. Respondents committed the following violations:

18 1. Jon Bruning violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101(a) by
19 failing to timely file his Statement of Candidacy after becoming a candidate by November 30,
20 2010.

21 2. Bruning for Senate, Inc. f/k/a Bruning 2012 Exploratory Committee
22 and Douglas R. Ayer in his official capacity as treasurer violated 2 U.S.C. §§ 433(a) and 434(a)
23 by failing to timely file a Statement of Organization and the 2010 Year End disclosure report.

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1 3. Bruning for Senate, Inc. f/k/a Bruning 2012 Exploratory Committee
2 and Douglas R. Ayer in his official capacity as treasurer violated 2 U.S.C. § 434(b) by failing to
3 disclose the financial activity of Jon Bruning Exploratory Committee.

4 VI. 1. Respondents will pay a civil penalty to the Federal Election Commission
5 in the amount of Nineteen Thousand Dollars (\$19,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

6 2. Jon Bruning will cease and desist from violating 2 U.S.C. § 432(e)(1)
7 and 11 C.F.R. § 101(a).

8 3. Bruning for Senate, Inc. f/k/a Bruning 2012 Exploratory Committee
9 and Douglas R. Ayer in his official capacity as treasurer will cease and desist from violating
10 2 U.S.C. §§ 433(a), 434(a) and 434(b).

11 4. Bruning for Senate, Inc. f/k/a Bruning 2012 Exploratory Committee
12 and Douglas R. Ayer in his official capacity as treasurer will amend its disclosure reports to
13 disclose all of the financial activity of Jon Bruning Exploratory Committee pursuant to the Act
14 and Commission regulations and as the Commission's Reports Analysis Division may direct.

15 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C
16 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
17 with this agreement. If the Commission believes that this agreement or any requirement thereof
18 has been violated, it may institute a civil action for relief in the United States District Court for
19 the District of Columbia.

20 VIII. This agreement shall become effective as of the date that all parties hereto have
21 executed same and the Commission has approved the entire agreement.

22 IX. Respondents shall have no more than 30 days from the date this agreement

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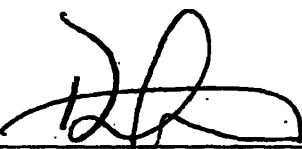
- 1 becomes effective to comply with and implement the requirements contained in this agreement
2 and to so notify the Commission.

3 X. This Conciliation Agreement constitutes the entire agreement between the parties
4 on the matters raised herein, and no other statement, promise, or agreement, either written or
5 oral, made by either party or by agents of either party, that is not contained in this written
6 agreement shall be enforceable.

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8 FOR THE COMMISSION:

9 Anthony Herman
10 General Counsel

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15 BY:




16 Daniel A. Petalas
17 Associate General Counsel for Enforcement
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19

4/12/13
Date

20 FOR THE RESPONDENTS:

21
22
23
24 BY:



25 Cleta Mitchell, Esq.
26 Counsel for Respondents
27

3.28.2013
Date

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